IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 23RD JULY 2007 / 1ST SRAVANA 1929

WA.No. 1730 of 2005()

AGAINST THE JUDGEMENT/ORDER IN WPC.22390/2004 Dated 10/06/2005
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APPELLANT: PETITIONERS
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1. GENERAL MANAGER,
CORPORATE EDUCATIONAL AGENCY OF DISCALCED
CARMALITES PROVINCIAL HOUSE, CHITTOOR ROAD,
KOCHI-18

2. SHEEBA MICHAEL, L.G.HINDI TEACHER,
H.I.B.H.S., VARAPPUZHA.

BY ADV. SRI.ABRAHAM VAKKANAL
SRI.SAJI KURIACHAN
SRI.M.R.NANDAKUMAR
SRI.PAUL ABRAHAM VAKKANAL
SRI.ARUL KUMAR.P
SMT.MERIN THALIATH

RESPONDENTS: RESPONDENTS
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1. STATE OF KERALA REPRESENTED BY THE
SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, SECRETARIAT ANNEX,
THIRUVANANTHAPURAM.

2. THE DIRECTOR OF PUBLIC INSTRUCTION,
THIRUVANANTHAPURAM.

3. THE DISTRICT EDUCATIONAL OFFICER,
ALUVA.

4. ANISH AUGUSTINE, MANGALATH HOUSE,
EZHUPUNNA P.O., CHERTHALA, ALAPPUZHA DISTRICT.

R1 TOR 3 BY GOVT PLEADER SRI K. SANDESH RAJ
R4 BY ADV. SRI.SAJEEV BHASKAR
SRI.PRAMOD J.DEV

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD
ON 09/07/2007, ALONG WITH WA NO. 1729 OF 2005
WA NO. 1726 OF 2005 WA NO. 1338 OF 2005
WA NO. 1727 OF 2005 WA NO. 1681 OF 2005
THE COURT ON 23/07/2007 DELIVERED THE
FOLLOWING:

K.S. RADHAKRISHNAN & ANTONY DOMINIC, JJ.

W.A. Nos. 1730, 1729, 1736, 1338,
1727and 1681 of 2005

Dated: 23rd July 2007

JUDGMENT

Radhakrishnan, J.

Common questions arise for consideration in this batch of cases and hence we are disposing of all these cases by a common judgment.

2. The main point in controversy is whether Rule 51B claim raised by Anish Augustine is legally sustainable or not. Anish Augustine's mother Anna was working as U.P.S.A in St. Antony's U.P. School, Palluruthy. She died in harness on 09.10.1989. Claimant at that time was only 9 years old, his date of birth was 23.05.1979 and he attained majority on 22.05.1997 and the three years prescribed under the rules expired on 22.05.2000. Claim for compassionate appointment under Section 51 B can be made in government schools as well as in aided schools by government order, G.O.(P) 12/99/P&ARD dated 24.05.1999. Compassionate appointment scheme has been produced as Ext. P7 in W.P.C.

22390 of 2004. Clauses 19 and 20, which are relevant for our purpose, are extracted hereunder.

> 19. The time limit for preferring applications under the scheme will be two years from the date of death of government servants. In the case of minor, the period will be within three years after attaining majority.
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> 20. Applications for appointment from dependents of government servants who die in harness will be entertained only in the prescribed form given in Appendix A with a court fee stamp of Rs 2 affixed thereon. The applications shall be submitted in the office where the Government servant had last worked. Legal heirship certificate issued by the Tahsildar concerned income certificate and the death certificate should invariably be enclosed with the application. An applicant under the compassionate employment scheme will be permitted to indicate the order of priority of the posts applied for. To the extent possible this order of priority will be accepted. However if this is not possible the applicant will be appointed to any available vacancy in any of the subordinate services.

Clause 19 of the above mentioned government order says that in the case of minor, the period will be within three years after attaining majority. Counsel for the petitioner submitted that petitioner had submitted his first application on 20.09.1999, that is, after the coming into force of the government order which the Manager has denied. Counsel appearing for Anish Augustine also submitted that he had made yet another application on 15.05.2000 which was rejected. Petitioner sent another claim on 30.05.2002 and the same was

received by the Manager on 02.06.2002. When a vacancy of Hindi language teacher arose the petitioner made yet another application on 15.05.2002 which was rejected stating that it was not a proper application as per rules. Procedure for submitting application is prescribed in clause 20 which says that application for appointment from dependents of government servants who die in harness will be entertained only if filed in the prescribed form given in Appendix A with a court fee stamp of Rs 2 affixed thereon with legal heirship certificate issued by the Tahsildar concerned, income certificate and the death certificate. Admittedly those formalities were not complied with by Anish Augustine. Therefore Management was not obliged to consider the application which was not filed in the prescribed form.

3. Government vide Ext. P3 order dated 07.03.2003 produced in W.P.C.No 22390 of 2004 permitted Anish Augustine to file a fresh application for appointment under the compassionate employment scheme in the prescribed form with documents as prescribed in para 3 of government order dated 25.05.1999 and the Manager was directed to consider the application if it was in the prescribed form in the next arising vacancy. We are of the view, Government was not justified in giving such a direction to the Manager since application

was filed beyond three years after attaining majority by Anish Augustine. Time limit mentioned in clause 19 has to be strightly applied especially in the case of compassionate appointment.

4. A Division Bench of this court in Deepak v. Secretary, General Education Department (2002 (3) KLT 288) held that if an application is made for compassionate appointment, there must be some proximity between the date of death as well as the date of application. The object of compassionate appointment, as the apex court observed, is to tide over the sudden financial crisis resulting due to the death of the bread-earner. It is not as if on the death of an employee, claim of the dependant is kept open for ever. Once a dependent is not always a dependant. There cannot be reservation of vacancy till such time the applicant becomes major or till such time the applicant acquires qualification. Rule 51B and other government orders pertaining to compassionate appointment are all made on humanitarian consideration. It is always in the nature of an exception to the general provision and exception cannot always occupy the place of the main provision and thereby nullify or dilute the efficacy of the main provision by denuding the right conferred by the main provision to persons otherwise eligible. Relying on the

above mentioned principle we are of the view, clauses 19 and 20 have to be interpreted strictly. Facts would indicate that the petitioner has not submitted a proper application in compliance with clauses 19 and 20 of the government order which is admittedly made applicable to aided schools as well. Government, in our view, is not justified in directing the Manager to consider the application since it was belated.

5. Anish Augustine has also preferred W.P.C.No 12501 of 2004 seeking a writ of mandamus directing the third respondent to appoint him as L.G. Hindi teacher in the vacancy arose in H.I.B. School, Varapuzha and also for other consequential reliefs. He is also aggrieved by the appointment of the fourth respondent Smt Seeba Michael working as Junior Lower Grade Hindi Teacher, H.I.B. School, Varapuzha. Facts would indicate that Seeba Michael is a rule 51A claimant and hence she was appointed in the vacancy which arose in the school as L.P. Hindi Teacher on 02.06.2003. In our view, Anish Augustine cannot have any claim over Seeba Michael and it is unnecessary to examine whether Rule 51B claimant has a better claim over Rule 51A claimant. Admittedly Anish Augustine could not establish claim under Rule 51B and his

application was not liable to be considered as well. Further it has also come out in evidence that Anish Augustine did not possess the requisite qualification on the date of occurrence of vacancy. Taking into consideration all these aspects we are of the view, learned single judge was not justified in directing the Management to consider the claim of Anish Augustine.

6. In such circumstances, we are inclined to allow W.A. Nos 1730, 1729 and 1736 of 2005 and dismiss W.A. Nos.1338 of 2005, 1727 of 2005 and 1681 of 2005 and set aside the judgment of the learned single judge. Consequently writ petition, W.P.C.No 22390 of 2004 filed by the Management would stand allowed and Ext.P3 order passed by the Government on 7.2.2003 directing the Manager to consider the claim of Anish Augustine would stand quashed. W.P.C. No 12501 of 2004 and O.P. No 14868 of 2003 filed by Anish Augustine would stand dismissed.

Sd/-
K.S. RADHAKRISHNAN
Judge

Sd/-
ANTONY DOMINIC
Judge

23/07/2007en

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